

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KYLE J. RODNEY,

Petitioner,

vs.

RENEE BAKER, *et al.*,

Respondents.

3:13-cv-00323-RCJ-VPC

ORDER

This is a habeas corpus proceeding brought pursuant to 28 U.S.C. § 2254. On March 4, 2016, this court entered an order deciding respondents' motion to dismiss (ECF No. 34) in which it found that several of petitioner's claims are unexhausted. ECF No. 41. Having determined that petitioner is not entitled to a stay under *Rhines v. Weber*, 544 U.S. 269 (2005), the court gave petitioner twenty days within which to file a notice of abandonment of unexhausted claims indicating that unexhausted are to be deleted from his amended petition (ECF No. 33). The court also advised petitioner that failure to abandon his unexhausted claims would result in a dismissal of his petition pursuant to *Rose v. Lundy*, 455 U.S. 509 (1982).

On March 16, 2016, petitioner filed a response to the court's March 4 order in which he expresses uncertainty regarding his procedural options. ECF No. 42. In particular, petitioner indicates that he reads *Lundy* as authorizing a procedure wherein the court dismisses his current

1 petition without prejudice, then permits him to return to this court once his claims have been
2 exhausted. Of course, this reading overlooks the fact that “AEDPA in 1996 dramatically altered the
3 landscape for federal habeas corpus petitions, by . . . preserv[ing] *Lundy*’s total exhaustion
4 requirement,” but “also impos[ing] a 1-year statute of limitations on the filing of federal petitions.”
5 *Rhines*, 544 U.S. at 274. Thus, if the court were to dismiss the habeas petition in this case, a habeas
6 petition filed by petitioner at a future date would be time-barred.

7 Stay and abeyance under *Rhines* is the procedure that allows a habeas petitioner to address
8 the dilemma imposed by the intersection of the total exhaustion requirement and the 1-year statute of
9 limitations. However, for the reasons set forth in this court’s March 4 order, petitioner is not entitled
10 to a stay under *Rhines*. Moreover, the court also notes that, at this point, petitioner would almost
11 certainly be procedurally barred from presenting his unexhausted claims in state court. Accordingly,
12 even if it stayed this action to permit state court exhaustion of unexhausted claims, this court would
13 nonetheless be barred, by the doctrine of procedural default, from considering those claims on the
14 merits. *See Coleman v. Thompson*, 501 U.S. 722, 730–31 (1991).

15 Having provided the foregoing clarification, the court shall allow petition **one** more
16 opportunity to abandon his unexhausted claims. Failure to do so will result in the dismissal of his
17 petition.

18 **IT IS THEREFORE ORDERED** that petitioner shall have **twenty (20) days** from the date
19 this order is entered within which to file a Notice of Abandonment of Unexhausted Claims, indicating
20 that Grounds 7, 8, 11, 12, 13 and 14 are to be deleted from his amended petition (ECF No. 33).

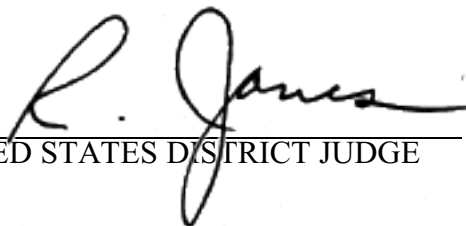
21 **IT IS FURTHER ORDERED** that, if petitioner does not abandon his unexhausted claims
22 within the time allowed, the amended petition (ECF No. 33) shall be dismissed under *Rose v. Lundy*,
23 455 U.S. 509 (1982).

24 **IT IS FURTHER ORDERED** that, if petitioner abandons his unexhausted claims within the
25 time allowed, respondents shall have **thirty (30) days** from the date the Notice of Abandonment is
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1 filed within which to file an Answer to the remaining claim(s) in the amended petition (ECF No. 33).
2 Petitioner shall have **twenty (20) days** following service of respondents' answer in which to file a
3 reply.

4 **IT IS FURTHER ORDERED** that respondents' motion for extension of time (ECF No. 43)
5 is DENIED as moot.

6 DATED: This 7th day of June, 2016.

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9 UNITED STATES DISTRICT JUDGE
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